No. 93-1660

In The

Supreme Court of the United States

October Term, 1994

STATE OF ARIZONA,

Petitioner,

v.

ISAAC EVANS,

Respondent.

On Writ Of Certiorari
To The Supreme Court Of Arizona

PETITIONER'S REPLY BRIEF

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A. This Court Has Jurisdiction Over This Case

Evans contends that this Court lacks jurisdiction and should dismiss the petition as improvidently granted. He claims that the Arizona Supreme Court's opinion was not based on the Fourth Amendment, but instead rested on independent state grounds. He also suggests that if there is doubt regarding whether the Arizona Supreme Court decided a federal question, this Court should remand for clarification.

The respondent in *Michigan v. Long*, 463 U.S. 1032 (1983), made the same argument about the Michigan Supreme Court's decision on a search and seizure issue, noting that Michigan courts have provided greater protection from searches and seizures under the state constitution than is afforded under the Fourth Amendment. This Court acknowledged that it will not review a state court decision which indicates clearly and expressly that it is alternatively based on separate, adequate and independent state grounds. 463 U.S. at 1041. This Court, however, rejected the notion that, in the absence of such a plain statement of independent state grounds, it should remand to the state court for clarification. *Id.* at 1039-40. Instead, this Court held it will "assume there are no such grounds when it is not clear from the opinion itself that the state court relied upon an adequate and independent state ground and when it fairly appears that the state court rested its decision primarily on federal law." *Id.* at 1042 (footnote omitted). Since, aside from two citations to the State Constitution, the Michigan Supreme Court

relied exclusively on its understanding of federal case law, this Court concluded that it had jurisdiction.

This Court likewise has jurisdiction in this case. First, the Arizona Supreme Court's decision contains no plain statement that it relied upon an adequate and independent state ground. Second, in reaching its decision the Arizona Supreme Court never cited the Arizona Constitution. Third, unlike the respondent in *Michigan v. Long*, Evans cannot even assert that the Arizona Supreme Court provides greater protection from searches and seizures under the state constitution than is afforded under the Fourth Amendment. The Arizona Supreme Court has held that the exclusionary rule under state law is no broader than the federal rule. *State v. Bolt*, 689 P.2d 519, 528 (Ariz. 1984). Fourth, the Arizona Supreme Court relied almost exclusively on decisions by this Court, particularly when discussing the purposes to be served by the exclusionary rule. (Pet. App. at 4a, n. 1.) Further, the legal journals and treatises, as well as the state court decisions the Arizona Supreme Court cited, focus on the Fourth Amendment and decisions from this Court, primarily *United States v. Leon*, 468 U.S. 897 (1984). Under these circumstances, it is evident that the Arizona Supreme Court rested its decision primarily on federal law, and therefore respondent's jurisdictional argument is meritless.

B. The Exclusionary Rule Should Not Be Applied in This Case

Evans' argument regarding application of the exclusionary rule proceeds along the same line as that adopted

by the majority of the Arizona Supreme Court. He focuses on the fact that a Fourth Amendment violation occurred here, and asserts that the violation requires application of the exclusionary rule "in the absence of some exception." (Resp. Brief at 11.)

Evans' approach ignores the analytical framework this Court has consistently followed since *United States v. Calandra*, 414 U.S. 338 (1974). Contrary to Evans' assertions, whether to apply the exclusionary rule is an issue wholly separate from the issue whether the Fourth Amendment has been violated. *United States v. Leon*, 468 U.S. 897, 906 (1984). This Court has made it clear that, even though the Fourth Amendment has been violated, the exclusionary rule will only be applied where its remedial purpose will be most effectively served.

Evans next suggests that the "good faith" exception to the exclusionary rule announced in *Leon* is a narrow one, limited to situations where a police officer relies on a warrant issued by a magistrate.[1] While the holding in

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[1] Respondent, like the majority of the Arizona Supreme Court, attempts to distinguish *Leon* on the grounds that the evidence seized in that case was obtained pursuant to a facially valid warrant that was later invalidated. Here, evidence was seized pursuant to a bench warrant that had been issued by a magistrate but later quashed. This distinction is not material. What is material is that in both cases the officers relied on information that a reasonable officer would have believed legally authorized him to conduct a search or make an arrest. As Justice Martone of the Arizona Supreme Court stated in his dissent:

> When the computer shows an outstanding arrest warrant, the officer is expected to make an arrest. He is in the same position as one who holds an arrest warrant

Leon is limited to warrant-authorized searches, the analytical framework applied by this Court in reaching that holding is not. Three years after *Leon*, this Court extended the "good faith" exception beyond warrant-authorized searches and applied it to searches authorized by a statute. *Illinois v. Krull*, 480 U.S. 340 (1987). Thus, this Court has already rejected Evans' attempt to limit *Leon*.

Amicus National Association of Criminal Defense Lawyers attempts to account for *Krull* by suggesting that the "good faith" exception is not limited to warrant-authorized searches, but is limited to situations involving "other-directed" searches. (NACDL Brief at 8-12.) Petitioner rejects this premise, but notes that the officer's arrest of respondent was "other-directed": he acted on the basis of information that had been provided to the Sheriff's Office by the clerk of the justice court, and the failure to update that information was due to an error by the clerk.

In any event, the decisions in *Leon* and *Krull* are not limited to a certain type of Fourth Amendment violation. In a case that preceded both *Leon* and *Krull*, this Court held that the exclusionary rule would not be applied in federal habeas corpus proceedings. *Stone v. Powell*, 428 U.S. 465 (1976). The holding in *Stone* was not limited by

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> in his hand. It makes no difference whether, after issuance, a warrant is quashed or otherwise invalid. In both cases the warrant is without effect, yet it appears to the officer to be facially valid. In either case, *Leon* controls.

(Pet. App. at 16a.) Thus, even if respondent were correct that *Leon* is limited to warrant-authorized searches, his argument would still lack merit.

the type of Fourth Amendment violation that may have occurred. The holding instead was grounded on the same analytical framework applied in *Leon* and *Krull*: the primary purpose of the exclusionary rule (deterrence of future unlawful police misconduct) would not be served by its application under the facts of the case.

Evans asserts that *Whiteley v. Warden*, 401 U.S. 560 (1971), and *United States v. Hensley*, 469 U.S. 221 (1985), require suppression in this case. In those cases, this Court held that the Fourth Amendment is violated when police arrest a suspect based on a report that there is a warrant outstanding, but the warrant is later held invalid (*Whiteley*), or when the police detain a suspect within the meaning of *Terry v. Ohio*, 392 U.S. 1 (1968), based on a police flyer that lacks reasonable suspicion (*Hensley*). Neither decision requires suppression in this case. *Whiteley* predates this Court's decisions in *Calandra* and *Leon*.[2] Although the *Hensley* decision came a year after *Leon*, *Hensley* did not cite (let alone reject) *Leon*. In fact, this Court addressed no exclusionary rule issue in *Hensley* because it found no Fourth Amendment violation. In addition, applying the *Leon* exception to cases like this one is not inconsistent with *Whitely* and *Hensley*. Because those cases hold that the police cannot rely on erroneously-issued warrants or flyers to seize a suspect, the police must release anyone so held once they learn that the warrant or flyer should not have issued. Applying

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[2] A purely factual distinction exists in that the warrant in *Leon* was supported by more than a "bare bones" affidavit, 468 U.S. at 926, while the warrant in *Whiteley* was not, 401 U.S. at 565.

Leon to cases like this one simply means that if the officers reasonably believed that the warrant or flyer was valid, evidence that the officers acquired during the time that the suspect was detained should not be suppressed. For that reason, there is no inconsistency between this Court's decisions in *Whiteley* and *Hensley*, on the one hand, and its decision in *Leon* on the other.

Evans claims that the *Leon* exception should not apply here because "the police computer was at fault." (Resp. Brief at 20.) Petitioner agrees that this Court has authority to decide who was at fault in this case. The record, however, does not support the conclusion that the Sheriff's Office was at fault. The justice court clerk's office did not properly record the quashing of the warrant in its own files (J.A. at 29, 32), let alone properly transmit that information to the Sheriff's Office. Also, in three other cases where warrants had been quashed on the same day as Evans', the justice court clerk's office did not properly record the quashing of the warrants. (*Id.* at 37.) Even if, as Evans suggests, the Sheriff's Office had some Fourth Amendment obligation to allow the justice court clerk's office access to the Sheriff's Office computer system, this record does not support faulting the Sheriff's Office for the mistake that occurred here.

Finally, Evans asks this Court to adopt procedures requiring police "to have a fax of a warrant if they are to have the power to arrest under its authority" (Resp. Brief at 24), or to allow court clerks to have "direct access" to law enforcement information systems "to correct warrant information." (*Id.* at 24, n. 7.) Evans did not raise this claim in the courts below and should not be allowed to do so in this Court for the first time. *See, e.g., United States*

v. Alvarez-Sanchez, 114 S.Ct. 1599, 1605 n. 5 (1994). Further, even if this Court were to hold that the Fourth Amendment imposed such a requirement, no such requirement was in effect when Evans was arrested, and thus the arresting officers cannot be said to have acted unreasonably for failing to comply with a rule that did not yet exist. In any event, requiring an officer to have a signed warrant or a copy of it in his hands before he can arrest a suspect would be inconsistent with the "collective knowledge" doctrine adopted in *Hensley*, 469 U.S. at 231, *Illinois v. Andreas*, 463 U.S. 765, 771 n. 5 (1983), and *Whiteley*, 401 U.S. at 568. Under that doctrine, the facts known to one officer cooperating in an investigation will be deemed to be known by all members of the team. That doctrine applies in this context: just as a warrant in the possession of one officer would be deemed to be in the possession of the entire team, so, too, should a warrant that is listed in a law enforcement computer be deemed to be in the possession of all officers. An officer therefore should be free to act on the basis of a facially valid report from a law enforcement computer that there is a warrant outstanding for a suspect's arrest.

Petitioner agrees with Evans that mere subjective good faith of the officers is not enough to justify application of *Leon*. Their conduct must also be objectively reasonable. The officers who arrested Evans were plainly acting in subjective good faith, and their conduct was just as plainly objectively reasonable because a reasonable officer in their situation would have believed that the report of the outstanding warrant was valid. Therefore,

Leon is applicable and the evidence should not be suppressed.

CONCLUSION

The judgment of the Arizona Supreme Court should be reversed.

Respectfully submitted,

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